



AF/2665  
**Applicant:** Joseph A. Kwak  
**Application No.:** 10/085,187

**PATENT**  
**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In the **PATENT APPLICATION** of:

Joseph A. Kwak

**Application No.:** 10/085,187

**Confirmation No.:** 3548

**Filed:** February 27, 2002

**For:** METHOD FOR PHYSICAL LAYER  
AUTOMATIC REPEAT REQUEST FOR  
A SUBSCRIBER UNIT

**Group:** 2665

**Examiner:** Daniel J. Ryman

**Our File:** I-2-0203.4US

**Date:** December 8, 2004

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DEC 15 2004

Technology Center 2600

**REQUEST REINSTATEMENT OF APPEAL  
AND SUPPLEMENTAL APPEAL BRIEF  
UNDER 37 C.F.R. § 1.113**

Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Further to the September 8, 2004 Final Action, Applicant respectfully requests reinstatement of the Appeal and provides this Supplemental Appeal Brief in view of the new grounds of rejection brought up in the final action.

## **ARGUMENTS**

In the September 8, 2004 final action, claims 1 and 7 were rejected under 35 U.S.C. §103(a) as being unpatentable over U. S. Patent No. 5,101,406 (Messenger); claims 2, 6 and 9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Messenger in view of U. S. Patent No. 5,828,677 (Sayeed et al); claim 3 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Messenger in view of Sayeed et al and further in view of U. S. Patent No. 6,449,246 (Barton et al); claim 4 was rejected under U. S.C. § 103(a) as being unpatentable over Messenger in view of U. S. Patent No. 6,064,692 (Chow); and claims 5 and 8 were rejected under 35 U. S. C. § 103(a) as being unpatentable over Messenger in view of U. S. Patent No. 5,982,760 (Chen).

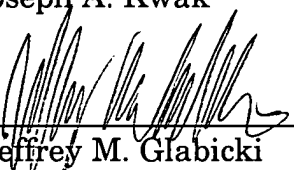
Since this final rejection of the claims is essentially the same as the February 17, 2004 final rejection, Applicants rely on the arguments set forth in the July 14, 2004 Appeal Brief and add the following. The current final rejection indicates that "wherein if the collected error statistics indicate a low number of errors, a higher capacity encoding/modulation scheme is selected as the particular encoding/data modulation" is disclosed in Messenger at column 2, lines 56 - 65 and column 8, line 50-column 9, line 7. With particular reference to columns 8 and 9, it is disclosed that a short spreading code is used and if an unacceptable error rate is achieved, that a long spreading code (more robust) is used. However, it clearly does not teach switching as a result of a low number of errors to a less robust scheme. As described in the Appeal Brief, the technique of the present invention for switching to a more or less

robust modulation based on the collected retransmission statistics allows for an optimum usage of the wireless channel. Messenger simply discloses transmitting at a less robust scheme and if a specified number of errors occur switching to a more robust scheme. Accordingly, this new portion of Messenger also does not render the claims obvious. Accordingly, Applicants respectfully submit that the claims should be passed to allowance. Although the references cited in the February 27, 2002 IDS were present in the parent application, they are herewith attached along with a Form PTO-1449 for convenience.

Respectfully submitted,

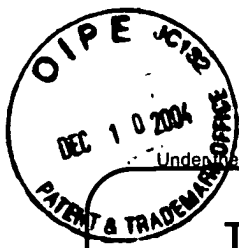
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Enclosures



PTO/SB/21 (09-04)

Approved for use through 07/31/2006.

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**TRANSMITTAL  
FORM**

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Application Number

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First Named Inventor

Joseph A. Kwak

Art Unit

2665

Examiner Name

Daniel J. Ryman

Attorney Docket Number

I-2-0203.4US

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<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Request for Refund	- Two (2) references
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> CD, Number of CD(s) _____	
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<b>Remarks</b>		

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm Name	VOLPE AND KOENIG, P.C.		
Signature			
Printed name	Jeffrey M. Glabicki		
Date	December 8, 2004	Reg. No.	42,584

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Typed or printed name	Jeffrey M. Glabicki	Date	December 8, 2004

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